

FILED

NOT FOR PUBLICATION

JAN 17 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MACIAS FRANK MADRIAGA,

Defendant - Appellant.

No. 04-57188

D.C. Nos. CV-03-02249-DMS
CR-99-00204-DMS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Macias Frank Madriaga appeals pro se from the district court's denial of his
28 U.S.C. § 2255 motion and the district court's denial of his motion for an

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

evidentiary hearing. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Madriaga contends that counsel constructively denied him effective assistance of counsel and that the district court erred in failing to hold an evidentiary hearing on this issue. We disagree. The record reveals that further discovery was necessary in preparation for trial at the time of counsel's motions for continuances and alleged failure to seek a speedy trial. Any conflict did not prevent effective assistance of counsel, *see Schell v. Witek*, 218 F.3d 1017, 1027 (9th Cir. 2000), because he took the only reasonable approach in each instance, namely, he obtained and attempted to review discovered materials to assist in the defense and he withdrew as counsel when the conflict grew.

AFFIRMED.